

Office Action Summary

Application No.

10/774,233

Applicant(s)

STACKENWALT ET AL.

Examiner

William V. Gilbert

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,8,9,11-14,22,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8,9,11-14,22,26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date: 8/19/08
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is a first action following a request for continued examination. Claims 3, 4, 6, 7, 10, 15-21 and 23-25 have been cancelled. Claims 1, 2, 5, 8, 9, 11-14, 22 and new claims 26 and 27 are pending below.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 July 2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 9, 11-14, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jahn (U.S. Patent No. 3,292,332) in view of Paul (U.S. Patent No. 4,866,904).

Claim 1: Jahn discloses a decorative structure comprising a support structure (Fig. 1: generally) adjacent a second face (the side facing down, or side in public view) of a panel, the support structure has a first member (1a) having a keyed aperture (12), a cross member (1b, 1c) disposed in the keyed aperture, and the aperture provides a twist lock attachment of the cross member to the first member (see the arrow from attached Fig. 1 from Jahn below which indicates the direction of the twist.) While Jahn is a system designed for ceiling panels,

it does not disclose the limitations of the panel and clip as claimed. Paul discloses a ceiling panel system (Fig. 11) with a panel (18) having first and second faces (the top surface not exposed and the exposed bottom surface, respectively) and a clip (10) fastening a support structure (Fig. 13: 20) to the panel and extending along a portion of the first face of the panel (see (Figs. 11, 12 and 13 generally). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the clip and panel in Paul in conjunction with the structural system in Jahn because the structural systems and panels are functionally equivalent and would perform properly as interchangeable members.

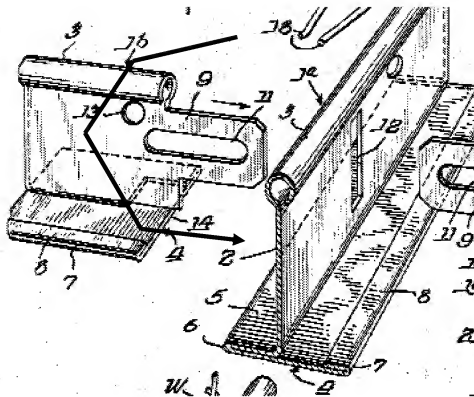


Figure 1 from Jahn

Claim 2: the first clip has a convolute retainer (Paul: see where portion 14a is folded over 14b and 16a is folded over 16b), and a portion of the retainer extends along the portion of the first face of the panel (see Fig. 12).

Claim 9: an intersection clip (Jahn: 15) engaging the first member and cross member (see Fig. 2) and locks the first member and cross member in position (see Fig. 2, generally).

Claim 11: the intersection clip comprises two achiral halves (portions 16).

Claim 12: the intersection clip comprises a convolute saddle member (portion 17) which integrally connects the two achiral halves.

Claim 13: the first clip (Paul: 10) comprises a major leg (16b) engaging the support structure (Paul, Fig. 13: 20).

Claim 14: the first clip comprises a minor leg (60c) engaging the support structure.

Claim 26: the support structure is positively locked to the panel (as shown). In Paul, Fig. 13a, a panel is locked in the support structure in that it will not move absent some force capable of moving it.

Claim 27: the locking is achieved by frictional engagement in that any contact between two members such as these results in frictional engagement.

Claims 5, 8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul in view of Jahn as applied to claim 1 above, and further in view of Deaton (U.S. Patent No. 4,471,596).

Claims 5, 8 and 22: the prior art of record discloses the claimed invention except noting that the members are curved, and that the panel is maintained in a flexed configuration by the support structure. Deaton discloses a decorative structure with

curved members (Fig. 7: 82) that keep a panel in a flexed configuration (Fig. 1). It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04.

Response to Arguments

3. The following addresses applicant's remarks/arguments dated 31 July 2008:

Priority:

Applicant's amendment to the specification overcomes the priority objection and it is withdrawn.

35 USC §103(a) Rejections:

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as applicant amended the claims. See however, the

rejection above for a further definition of how the examiner defined the "twist lock attachment" as claimed.

Regarding the limitation "fastening" with respect to the panel and support structure, the examiner argues that the resulting resting of one element on another is, using the broadest reasonable interpretation in light of the specification, in that it results in the attachment of one element to another.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./
Examiner, Art Unit 3635
/Basil Katcheves/
Primary Examiner, Art Unit 3635